

REMARKS

The allowance of Claims 9-14 and 31-36 and the confirmation that Claims 8 and 28-30 would be allowable if rewritten in independent form is appreciated. The remaining claims stand rejected as being anticipated under 35 U.S.C. §102(b). In particular, Claims 1, 3-6, 25 and 27 are rejected as being anticipated by U.S. Patent No. 3,694,976 to Stanley W. Warshaw. Claims 1-3, 5-7, 25 and 26 are rejected as being anticipated by U.S. Patent No. 3,848,379 to John O. Hazen. Further, Claims 1, 3, 5, 7 and 25 are rejected as being anticipated by U.S. Patent No. 4,866,898 to Allan R. LaRoche, et al. As described below, independent Claims 1, 2, 25 and 26 have been amended in order to further patentably distinguish the claimed invention from the cited references, taken either individually or in combination. Based on the foregoing amendments and the following remarks, Applicant respectfully requests reconsideration of the present application and allowance of the current set of claims.

Of the allowable claims, Claim 28 has been effectively rewritten in independent form by adding the recitations of Claim 28 to independent Claim 25. As such, the rejections of independent Claim 25, as well as Claims 27, 29 and 30 which depend therefrom, are overcome and Claims 25, 27, 29 and 30 should be in condition for immediate allowance. As a result of its incorporation into independent Claim 25, Claim 28 has also been canceled.

Independent Claim 1 has also been amended to include recitations previously set forth by allowable Claim 28. In particular, amended independent Claim 1 now defines the apparatus for sealing at least two surfaces to include "a filler disposed within and filling an area in the receiving aperture, between the deformable segment and the surface to which the sealing member is fixed". Since none of the cited references teach or suggest a filler as now recited by amended independent Claim 1 (see, e.g., gap 41 of the Warshaw '976 patent, slot 38 of the Hazen '379 patent and expansion joint 22 of the LaRoche '898 patent) and for at least the same reasons for which Claim 28 was previously indicated to be allowable, it is submitted that the rejections of amended independent Claim 1, as well as Claims 3-8 which depend therefrom, are overcome and Claims 1 and 3-8 should also be in condition for immediate allowance.

As noted above, the remaining claims, that is, independent Claims 2 and 26 are rejected as being anticipated by only the Hazen '379 patent. Claims 2 and 26 have now been amended to further define the coating, thereby further distinguishing the Hazen '379 patent. In this regard, Claims 2 and 26 have been amended to recite that the coating extends "continuously across all of that portion of said sealing member that faces away from the surfaces and at least one of the surfaces such that no portion of the sealing member is exposed through the coating". In contrast, the decorative floor covering material 48 that is considered by the Official Action to be a coating does not extend "continuously across all of that portion of said sealing member that faces away from the surfaces ... such that no portion of the sealing member is exposed through the coating". Instead, the trim strip 22 of the Hazen '379 patent which includes the gasket strip 25 which is alleged by the Official Action to be the deformable segment also includes a tile-stop extension 23 that extends upward through the floor covering material. As such, employing the interpretation of the Hazen '379 patent as the Official Action, the tile-stop extension would be a portion of the sealing member that faces away from the surfaces. In contrast to amended independent Claims 2 and 26, however, the tile-stop extension is uncovered by the floor covering material and is therefore exposed through the floor covering material. In this regard, column 5, lines 4-9 of the Hazen '379 patent states that "[i]t will be observed in FIG. 4 that the tile-stop extension has an upper extremity 47 elevated above the screed lip 32 and the cover plate 15 at a distance equal to the thickness of the anticipated decorative floor covering material 48."

Thus, the Hazen '379 patent does not teach or suggest a coating that extends "continuously across all of that portion of said sealing member that faces away from the surfaces and at least one of the surfaces such that no portion of the sealing member is exposed through the coating", as recited by amended independent Claims 2 and 26. For at least this reason, the rejection of independent Claims 2 and 26 is overcome.

CONCLUSION

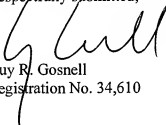
In view of the amendments to the claims and the remarks present above, Applicant respectfully submits that the present application is in condition for allowance. As such, the

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issuance of a Notice of Allowance is respectfully requested. In order to expedite examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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